IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAMON SMITH and AMBER SMITH,	§	
	§	
	§	
Plaintiffs	§	**CIVIL ACTION NO. ___________**
v.	§	**ECF**
	§	
DEVON ENERGY PRODUCTION COMPANY, L.P.	§	
	§	
	§	
Defendant	§	

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs Damon Smith and Amber Smith (collectively "The Smiths" or "Plaintiffs") come now before the Court, complaining of Devon Energy Production Company, L.P. ("Devon" or "Defendant"), and would show the Court the following:

I.

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) and the diversity jurisdiction doctrine, as the parties are citizens of different states and the amount in controversy is in excess of $75,000, excluding interest and costs of court. Venue lies in the Northern District of Texas as the real property made the subject of this suit lies in Denton County, Texas.

II.

PARTIES

1. Plaintiff Damon Smith is the husband of Amber Smith and is an individual who resides in Denton County, Texas.

2. Plaintiff Amber Smith is the wife of Damon Smith and is an individual who resides in Denton County, Texas.

3. Defendant Devon Energy Production Company, L.P. is an Oklahoma limited partnership with a principal office located at 20 North Broadway Avenue, Oklahoma City, Oklahoma 73102. Defendant is a wholly-owned subsidiary of Devon Energy Corporation, a Delaware corporation which trades on the New York Stock Exchange under symbol: DVN. At all times relevant to this lawsuit, Defendant conducted business within the State of Texas, and Defendant may be served via its Texas registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas Texas 75201.

III.

FACTS

1. Plaintiffs own a tract of land located in Denton County, Texas. Denton County is recognized as part of the natural gas production area known as the Barnett Shale.

2. The Smiths built and moved into their house in early 2003. The house is located on approximately 1.6 acres.

3. In connection with the construction of their house, the Smiths drilled a well for both agricultural and domestic use in November 2002. The well is 6.75" in diameter and was drilled to a depth of approximately 530' according to records submitted to the State of Texas. The drilling company reported that bentonite was not used in the well drilling process.

4. The well initially produced water of such high quality that it needed no filtration system. Damon Smith considered the water quality to be a point of pride that he mentioned to friends and family.

5. Defendant performed, and continues to perform, operations related to natural gas exploration, production, storage, and transport near Plaintiffs' home. It is believed that these activities include the use of drilling muds, hydraulic fracturing fluid, (also known as "frac'ing" fluid), and proppants to stimulate and sustain natural gas production from the natural gas-bearing layer of the Barnett Shale. It is believed that drilling muds, hydraulic fracturing fluid, "produced" waste water, and associated drilling wastes and products contain chemicals and substances later found in Plaintiffs' water well.

6. Around February or March of 2009, the Smith family started occasionally noticing sediment in the water. In response to the sediment, the Smiths installed an in-line filtration system, which seemed to initially address the water quality issues.

7. Around April 2010, however, at approximately the same time that Defendant installed natural gas collection infrastructure about 600' away from the Smith home, the water filtration system became ineffective. While rated for a 4-month life cycle under typical

duty, the filter would last only days — or sometimes hours — before becoming fouled with a grey clay-like substance.

8. On or about May 3, 2010, the Smiths contacted an employee of Defendant who referred the matter to Texas Railroad Commission.

9. On or about May 5, 2010, a Devon representative and a Texas Railroad Commission employee visited the Smith house. Upon seeing the well, the TRC employee noted that the material "looked like drilling mud," but that he "just couldn't see how the water supply was contaminated." He also stated that the hydrogeologic flow in the area is roughly southeast. The Smith residence is roughly southeast of the Devon natural gas infrastructure. The TRC took samples of the Smiths' water for analysis.

10. On or about May 8, 2010, Damon Smith attempted to clear the system by cleaning material from the pressure tank. After cleaning approximately 15-20 pounds of material from the holding tank, he was unable to get clean water to flow, and the filter was clogged again after about two hours.

11. The first set of water samples pulled by the TRC were received on approximately May 20, 2010. The results were alarming: arsenic was detected at 75.2 µg/L; barium at 979µg/L, chromium at 253µg/L, lead at 319µg/L, and selenium at 7.1 µg/L. These results are approximately 7.5 times the maximum contaminant level ("MCL") for arsenic, about 2.5 times the MCL for chromium, about 21 times the MCL for lead, and about 1.2 times the MCL for selenium.

12. While later tests showed lower levels of heavy metals, other disturbing results were obtained. Tests for two types of surfactants - methylene blue active substances ("MBAS") and cobalt thiocyanate active substances ("CTAS") came back "strong, positive," and "medium, positive" respectively. In addition, MCLs were exceeded for acetone (10 times the MCL), 2-butanone (4.5 times the MCL), and carbon disulfide (6 times the MCL). In addition, the total dissolved solids ("TDS") exceeded 834,000 μg/L, which is well above the 500,000 μg/L drinking water limit.

13. After learning of the test results, the Smiths ceased using their well for domestic water supply. Only the fact that Mr. Smith's father is a next door neighbor has prevented them from having to obtain water from a third source. The Smiths initially ran a hose from Mr. Smith's father's well, and later installed a pipe. The continued integrity of the elder Mr. Smith's well is crucial to the Smith family's ability to obtain clean water for domestic use.

14. Recently, the Smiths have attempted to refinance their house, but have been prevented from doing so by lender requirements that the water well be certified as usable and free from contamination.

IV.

FIRST CAUSE OF ACTION - TRESPASS

1. Plaintiffs adopt and re-allege each preceding paragraph as if set forth here in their entirety.

2. Devon trespassed upon Plaintiffs' land by allowing metals, chemicals, and other substances from from its natural gas well drilling, fracturing, and related storage and transport infrastructure to enter the Plaintiffs' subsurface area, including the aquifer that feeds their well. Through its acts and omissions, Devon has caused or permitted unwanted and hazardous materials including drilling mud, chemicals, and metals, to migrate from its wells and infrastructure to Plaintiffs' property.

3. Devon's trespass has resulted in physical and lasting damage to Plaintiffs' property and caused injury to Plaintiffs' right of unencumbered possession, use, and enjoyment of their ground water. As a result of the trespass, Plaintiffs' can neither drink from their well nor use the water for daily activities.

4. Devon's trespass is a proximate cause of Plaintiffs' damages.

V.

SECOND CAUSE OF ACTION - NUISANCE

1. Plaintiffs adopt and re-allege each preceding paragraph as if set forth here in their entirety.

2. Devon's well drilling and production operations and its storage and transport infrastructure interfered with and invaded Plaintiffs' interest in their well and land by contaminating their sole owned source of drinking water.

3. Devon's well drilling and production operations and its storage and transport infrastructure was conducted and located in proximity to Plaintiffs' property and without

ordinary and reasonable care to avoid the release of drilling mud, frac'ing fluid, waste products, and other contaminants into the Plaintiffs' aquifer.

4. The acts and omissions of Devon resulted in the contamination of Plaintiffs' well and the well-source aquifer, which substantially interfered with and prevented Plaintiffs from using and enjoying their well water and their residence.

5. The contaminated well water and physical intrusion is a proximate cause of Plaintiffs' damages.

VI.

THIRD CAUSE OF ACTION - NEGLIGENCE

1. Plaintiffs adopt and re-allege each preceding paragraph as if set forth here in their entirety.

2. In conducting its natural gas well design, placement, drilling, use, monitoring and maintenance activities, Defendant owed a duty of care to Plaintiffs to not negligently or unnecessarily damage Plaintiffs surface estate, including Plaintiffs' well and the underlying aquifer and subsurface estate, through the release of chemicals, drilling mud, frac'ing fluid, and other produced and injected substances.

3. Defendant breached the duty of care owed to Plaintiffs when it failed to test, monitor, and maintain the integrity of its drilling, use, storage, and transport activities and when it failed to prevent the release of contaminants into Plaintiffs' water supply.

4. As a direct result of the acts and omissions of Defendant, Plaintiffs have sustained permanent and ongoing injuries to their real property.

5. Defendant's negligence is a proximate cause of Plaintiffs' injuries.

VII.

FOURTH CAUSE OF ACTION -FRAUD/FRAUDULENT CONCEALMENT

1. Plaintiffs adopt and re-allege each preceding paragraph as if set forth here in their entirety.

2. Defendant failed to warn Plaintiffs of, and have concealed the dangers of their natural gas exploration, production, storage, and transport operations to Plaintiffs, including but not limited to the composition and characteristics of the chemicals and substances used in the process and the potential impacts on Plaintiffs' water supply.

VIII.

FIFTH CAUSE OF ACTION - STRICT LIABILITY FOR ULTRAHAZARDOUS OR INHERENTLY DANGEROUS ACTIVITIES

1. Plaintiffs adopt and re-allege each preceding paragraph as if set forth here in their entirety.

2. Defendant's acts of natural gas drilling, production, storage, and transport are ultrahazardous or inherently dangerous activities. The aforementioned activities are the proximate and producing cause of Plaintiffs' water contamination. Accordingly, Defendant is strictly liable for the damages caused by its activities.

IX.

DAMAGES

1. As a result of Defendant's conduct as described above, Plaintiffs have incurred past expenses related to securing water from an alterative source.

2. Plaintiffs have suffered the loss of use of their land. This damage to the real property is permanent.

3. Plaintiffs have suffered a loss of market value in their land. This damage to the real property is permanent.

4. Plaintiffs have suffered the loss of the intrinsic value of the well water. This damage to the real property is permanent.

5. Plaintiffs have suffered the loss of the value of the groundwater *in situ* under their property. This damage to the real property is permanent.

6. Plaintiffs have suffered emotional harm and mental anguish from deprivation of enjoyment, loss of peace of mind, annoyance, inconvenience, and anxiety about the contaminated well water, which in all reasonable probability such mental anguish will continue in the future.

7. Plaintiffs also seek to recovery exemplary damages against Defendant in accordance with Texas Civil Practice and Remedies Code § 41.001, *et. seq.*

8. Plaintiffs seek pre- and post-judgement interest at the highest rate attainable

under Texas law.

X.

JURY TRIAL REQUESTED

1. Plaintiffs affirmatively avail themselves of their rights afforded by the Texas Constitution and applicable authority, and request a trial by a jury of their peers.

XI.

PRAYER

WHEREFORE, Plaintiffs pray that Defendant be cited to appear and answer herein; and upon trial of the matter, that Plaintiffs have judgment against Defendant for each of the damages alleged in Section IX, *supra*, and for such other relief, both general and special, at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

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